

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 28,010

In re: 5759 13<sup>th</sup> Street, N.W., Unit B2

Ward Four (4)

**DOROTHY REID**

Tenant/Appellant

v.

**JERRY WEINSTEIN/GABEN MANAGEMENT**

Housing Provider/Appellee

**DECISION AND ORDER**

April 3, 2008

**REISSUED ON APRIL 7, 2008**

**SZEGEDY-MASZAK, COMMISSIONER.** This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800 - 4399 (2004) govern these proceedings.

**I. PROCEDURAL HISTORY**

On December 3, 2003, Dorothy Reid, tenant of Unit 2B in a housing accommodation located at 5759 13<sup>th</sup> Street N.W., filed Tenant Petition (TP) 28,010 with

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**I. PROCEDURAL HISTORY**

On December 3, 2003, Dorothy Reid, tenant of Unit 2B in a housing accommodation located at 5759 13<sup>th</sup> Street N.W., filed Tenant Petition (TP) 28,010 with

RACD.<sup>1</sup> In her petition, she made the following claims against the housing provider, Jerry Weinstein/Gaben Management: 1) rent increases were taken by the housing provider while her unit was not in substantial compliance with the District of Columbia Housing Regulations; 2) services and/or facilities provided in connection with her rental unit, including heating, security, and repair, were substantially reduced or eliminated during her tenancy in violation of applicable provisions of the Act; and 3) the housing provider retaliated against the tenant for the proper exercise of her rights in violation of section 502 of the Act.<sup>2</sup> An RACD hearing on the petition was held on May 3, 2004, before Hearing Examiner Gerald J. Roper.

On December 10, 2004, the Hearing Examiner issued Reid v. Weinstein/Gaben Mgmt., LLC, TP 28,010 (RACD Dec. 10, 2004) (Decision). The Decision contained the following pertinent Findings of Fact:

4. The Petitioner, Dorothy Reid, filed the Tenant Petition/Complaint with the RACD on December 3, 2003. The petition was scheduled for hearing on February 3, 2004, rescheduled to March 3, 2004 and heard on May 3, 2004.
5. The Petitioner was evicted on February 19, 2004.
6. Petitioner failed to meet her burden of proof as to whether a rent increase was taken while Petitioner's rental unit was not in substantial compliance [with] the District of Columbia Housing Regulations.
7. Petitioner failed to meet her burden of proof as to whether maintenance and repair/replacement to the window security bars were substantially

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<sup>1</sup> The tenant filed an earlier petition with RACD, Reid v. Gaben Mgmt., LLC, TP 27,710 (RACD Sept. 3, 2003), with similar claims to those in the instant petition. The Hearing Examiner dismissed TP 27,710 without prejudice on the grounds that the tenant lacked the mental capacity to carry her burden of proof by a preponderance of evidence, pursuant to 14 DCMR § 4003 (2004). Record (R.) at 3. Tape Recording (RACD May 3, 2004).

<sup>2</sup> The tenant also alleged the housing provider's violation of a Voluntary Agreement regarding services and/or facilities. See D.C. OFFICIAL CODE § 42-3502.15 (2001). Since no Voluntary Agreement existed, the Hearing Examiner dismissed this claim with the agreement of the parties.

reduced.

8. Petitioner failed to meet her burden of proof as to whether the extermination service was permanently eliminated.
9. The Respondent substantially reduced the related services of heat and hot water during the period of December 2002 and April 2003.
10. All related findings of fact cited in the Evaluation of the Evidence Section is [*sic*] hereby incorporated by reference in these findings of fact.
11. Petitioner is entitled to a rent refund in the amount of \$857.50 for the reduction in heat and hot water service, plus interest in the amount of \$8.46.
12. Respondent has retaliated against the Petitioner in violation of Section 502 of the Act.

Decision at 10–11.

The Hearing Examiner made the following relevant Conclusions of Law:

4. Respondent substantially reduced the related services of heat and hot water to Petitioner's rental unit in violation of D.C. OFFICIAL CODE § 42-3502.04.
5. Respondent has retaliated against the petitioner in violation of D.C. OFFICIAL CODE § 42-3505.02.

Decision at 11-12.

In the Decision, the Hearing Examiner also ordered the housing provider to pay a penalty of \$250.00 to the District of Columbia for retaliation as permitted under D.C. OFFICIAL CODE § 42-3509.01 (2001), 14 DCMR § 3827.1 (2004), for willful violations of the Act.<sup>3</sup>

The tenant filed a "Motion for Reconsideration" on December 29, 2004.

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<sup>3</sup> D.C. OFFICIAL CODE § 42-3509.01(b) (2001) provides that "[a]ny person who willfully . . . (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation."

## **II. ISSUES ON APPEAL**

On February 3, 2005, the tenant filed a *pro se* Notice of Appeal from the Hearing Examiner's Decision in the Commission. The Commission held its appellate hearing on May 25, 2005. The tenant raised the following issues on appeal:

- A. Whether rent increases were taken from June 1999 to June 2003 while tenant's unit was not in substantial compliance with the D.C. Housing Regulations in violation of the Act
- B. Whether services and facilities provided to the tenant's unit had been substantially reduced and permanently eliminated in violation of the Act
- C. Whether retaliatory action was directed at the tenant by the housing provider for exercising her rights in violation of the Act
- D. Whether the Hearing Examiner failed to give appropriate consideration to overlapping issues regarding violation of the Housing Regulations, reduction in services and retaliation that the tenant had raised in earlier cases against the housing provider: TP 27,710 and Gaben Mgmt., LLC v. Reid, SR 20,076 (RACD Jan. 30, 2004)
- E. Whether the Hearing Examiner's decision contained typographical, numerical and other technical errors
- F. Whether tenant's lease was void under 14 DCMR §§ 302.1-.2 (2004).

Notice of Appeal at 1 - 2.

## **III. DISCUSSION**

- A. Whether rent increases were taken from June 1999 to June 2003 while tenant's unit was not in substantial compliance with the D.C. Housing Regulations in violation of the Act**
- B. Whether services and facilities provided to the tenant's unit had been substantially reduced and permanently eliminated in violation of the Act**
- C. Whether retaliatory action was directed at the tenant by the housing provider for exercising her rights in violation of the Act**

In issues A, B and C, the tenant repeats the same three (3) claims that she made in her petition, and at the Commission hearing. Record (R.) at 10 – 13. CD Recording

(RHC May 25, 2005). In her notice, and at the Commission hearing, her only support for issues A, B and C were a number of the same factual allegations that she had made to the Hearing Examiner. CD Recording (RHC May 25, 2005). These included a recitation of housing code violations such as water leaks and defective fixtures, the housing provider's elimination of extermination services and failure to replace security bars on her windows, and the housing provider's illegal entry into her apartment allegedly resulting in removal of, or damage to, her personal property. CD Recording (RHC May 25, 2005)

To bolster these factual allegations in her notice of appeal, she attached new evidence in the form of documents that she had not submitted as part of the record before the Hearing Examiner. These included copies of memos she had written to the housing provider relating to housing code violations, notices of rent increases and other correspondence.

After careful review of the tenant's notice of appeal and supporting record, the Commission concludes that, regarding issues A, B and C, the tenant was unable to provide any "clear and concise statement of the alleged errors in the decision of the Rent Administrator" as required under 14 DCMR § 3802.5 (2004). The Commission has repeatedly held that it cannot review issues on appeal that do not contain clear, concise statements of the alleged error in the Hearing Examiner's decision and order. Winthrop v. Briley, TP 27, 609 (RHC Nov. 3, 2005); Budd v. Haendel, TP 27,598 (RHC Dec. 16, 2004); Voltz v. Pinnacle Mgmt Co., TP 25,092 (RHC Sept. 28, 2001); Slaby v. Mizrahi, TP 23,167 (RHC Aug. 14, 1996). While we are mindful of the remedial purposes of the Act and the important role that lay litigants play in its enforcement, it remains an appellant's duty to provide the Commission a record sufficient to show affirmatively that error occurred. Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1298-1299 (D.C. 1990); Cohen v. District of Columbia Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985). Furthermore, regarding the new documentary evidence that the

tenant submitted with her notice, the Commission is unable to consider new evidence that was submitted post-hearing. See Harris v. District of Columbia Rental Hous. Comm'n, *supra* note 4, at 69; Akers v. Peterson, TP 27,987 (RHC July 1, 2005).

For the reasons stated above, the Commission dismisses issues A, B and C.

**D. Whether the Hearing Examiner failed to give appropriate consideration to overlapping issues regarding violation of the Housing Regulations, reduction in services and retaliation that the tenant had raised in earlier cases against the housing provider: TP 27,710 and Gaben Mgmt., LLC v. Reid, SR 20,076 (RACD Jan. 30, 2004)**

In Reid v Gaben Mgmt., LLC, TP 27,710, *supra* note 1, the tenant recited the same claims as in this case. It was dismissed without prejudice. Before the Hearing Examiner, the tenant claimed that TP 27,710 had been erroneously dismissed because he had failed to consider the claims that she has now raised in her petition. Tape Recording (RACD May 3, 2004).

The tenant also urged the Hearing Examiner to consider overlapping claims with those in this case regarding violation of the Housing Regulations, reduction in services and retaliation that she made in an earlier, unsuccessful challenge to the housing provider's substantial rehabilitation petition for the housing accommodation in Gaben Mgmt., LLC v. Reid, SR 20,076 (RACD Jan. 30, 2004); Tape Recording (RACD May 3, 2004). These claims included that the housing provider failed to provide proper maintenance and repair to the tenant's unit, that the substantial rehabilitation was a pretext for evicting tenants and that the Hearing Examiner erred in granting the housing provider's petition.

Our review of the record indicates that the Hearing Examiner considered the tenant's overlapping claims from the other cases in this case, and appropriately assessed

their relevancy in making his decision. *See Harris v. District of Columbia Rental Hous. Comm.*, 505 A.2d 66, 69 (D.C. 1986); *Turner v. Tscharmer*, TP 27,014 (RHC June 13, 2001). We note that the Commission's role in reviewing decisions is not to weigh the testimony and substitute its judgment for that of the fact finder who received the evidence and determined the weight to be accorded such evidence. *See Turner v. Tscharmer*, TP 27,014 at 11; *Gray v. Davis*, TP 23,081 (RHC Dec. 7, 1993). Tape Recording (RACD May 3, 2004). Accordingly, the decision of the Hearing Examiner is affirmed on this issue.

**E. Whether the Hearing Examiner's decision contained typographical, numerical and other technical errors**

In her appeal, the tenant recited the issues raised in her unsuccessful motion for reconsideration before the Hearing Examiner filed pursuant to 14 DCMR § 4013.1(b) (2004)<sup>4</sup>, without making any specific allegations of error or new evidence. The Commission rules provide that the denial of a motion for reconsideration shall not be subject to appeal to this Commission. *See* 14 DCMR § 4013.3 (2004). *See also Laprade v. Klinberg*, TP 27,920 (RHC June 22, 2005); *Wedderburn v. Thomas*, TP 23,970 (RHC July 30, 1996). The Commission therefore dismisses this issue.

**F. Whether tenant's lease was void under 14 DCMR §§ 302.1 - .2 (2004)**

The tenant did not raise this issue below, and has raised it for the first time in this appeal. As the Court and Commission have consistently held, an issue that was not raised below at the hearing cannot be raised on appeal to the Commission. *See Lenkin*

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<sup>4</sup> Under 14 DCMR § 4013.1(b) (2004):

[A]ny party served with a final decision and order may file a motion for reconsideration with the hearing examiner within ten (10) days of receipt of that decision, only in the following circumstances:

- (b) If the decision or order contains typographical, numerical or technical errors.

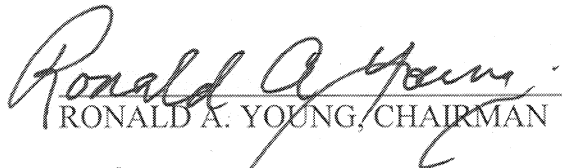


Co. Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 642 A.2d 1282 (D.C. 1994); Boer v. District of Columbia Rental Hous. Comm'n, 564 A.2d 54, 57 (D.C. 1989); Stone v. Keller, TP 27,033 (RHC May 19, 2004). Accordingly, this appeal issue is hereby dismissed.

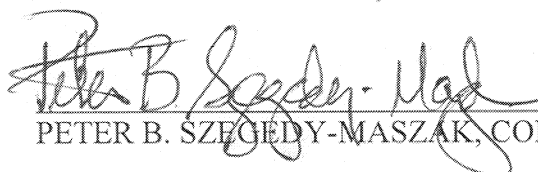
### **III. CONCLUSION**

The Commission hereby dismisses Issues A, B, C, E and F. The Commission finds no error of the Hearing Examiner regarding Issue D. Accordingly, the decision of the Hearing Examiner is affirmed.

**SO ORDERED.**

  
RONALD A. YOUNG, CHAIRMAN

  
DONATA L. EDWARDS, COMMISSIONER

  
PETER B. SZECEDY-MASZAK, COMMISSIONER

### **MOTIONS FOR RECONSIDERATION**

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR §3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

### **JUDICIAL REVIEW**

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision

... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20001  
(202) 879-2700

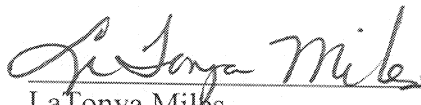
### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Decision and Order** in TP 28,010 was mailed postage prepaid by priority mail, with delivery confirmation on this **3<sup>rd</sup> day of April, 2008** to:

Dorothy Reid  
P.O. Box 41389  
Washington, DC 20018

Jerry Weinstein  
c/o Gaben Management  
P.O. Box 8204  
Silver Spring, MD 20907

Brian D. Riger, Esq.  
Gilder & Riger  
5272 River Road  
Suite 430  
Bethesda, MD 20816



LaTonya Miles  
Contact Representative  
(202) 442-8949

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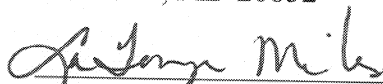
### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Reissued Decision and Order** in TP 28,010 was mailed postage prepaid by priority mail, with delivery confirmation on this 7<sup>th</sup> day of **April, 2008** to:

Dorothy Reid  
P.O. Box 41389  
Washington, DC 20018

Jerry Weinstein  
c/o Gaben Management  
P.O. Box 8204  
Silver Spring, MD 20907

Brian D. Riger, Esq.  
Gilder & Riger  
6001 Montrose Road, Suite 701  
Rockville, MD 20852



LaTonya Miles  
Contact Representative  
(202) 442-8949